Supreme Court, U.S.
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No. 96-306

In The

Supreme Court of the United States

October Term, 1995

METROPOLITAN LIFE INSURANCE COMPANY,

Petitioner,

v.

ROBERTSON-CECO CORP.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Did the majority below err in applying "reasonableness" factors above and beyond its finding that there were systematic and continuous contacts between the defendant and Vermont in concluding that the Vermont district court lacked *general* jurisdiction over the defendant under the Due Process Clause of the United States Constitution?

2. Is the decision of the majority below in conflict with the decisions of other federal and state courts in defining the constitutional limits on *general* jurisdiction?

3. Did the majority below err in failing to use transfer of venue to ameliorate any concerns relating to the forum's fairness and litigation convenience rather than dismissal, once it determined that defendant's contacts satisfied the minimum contacts requirement of the due process test?[1]

4. Did the majority below err in superimposing anti-forum shopping concerns in addition to the constitutional limitations on the exercise of jurisdiction established by this Court?

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[1] The formulation of this question in the Petition incorrectly implies that the lower court found the defendant to have "constitutionally sufficient contacts." The reformulation of the question tracks the language of the opinion below which held that the "minimum contacts requirement of the due process test" had been met. *See*, Opinion, App. at 23(a).

INTERESTED PARTIES

The Petitioner is Metropolitan Life Insurance Company.

The Respondent is Robertson-Ceco Corporation.

United Dominion Industries, Inc. was dismissed by summary judgment on March 4, 1995, and was not a party to the appeal below, nor is it an interested party to these proceedings.

There is no parent company to the Respondent and other than wholly owned subsidaries, it has no subsidiaries.

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent requests that the Court deny the Petition for a Writ of Certiorari seeking review of an opinion of the Court of Appeals for the Second Circuit. The Court of Appeal's opinion is reported at 84 F.3d 560 and reproduced in the Appendix to the Petition for a Writ of Certiorari at 1a - 35a and the opinions of the district court are unreported and reproduced in the Appendix of the Petition at 36a - 47a. (For the convenience of the Court, all citations to the opinion will be to the opinion attached as Appendix A to the Petition.)

JURISDICTION

The court of appeals entered its judgment on May 22, 1996. (App. 1a.) The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

For purposes of its response to the Petition for a Writ of Certiorari, Respondent adopts the Petitioner's Statement of the Case, except it corrects misstatements in the Petition as follows:

1. It does not admit, for any purpose, the accuracy of the factual statements in the first two paragraphs of Petitioner's Statement of the Case and observes that the factual assertions therein do not bear on the issues presented in the Petition.

2. It does not agree with all of the assertions in the paragraph beginning on page 2 and continuing on page 3 of the Petition and states that the description contained in the opinion below (App. at 6a-7a) sufficiently describes the allegations below with respect to Respondent's contacts with Vermont.

3. It does not agree with the statement on page 4 of the Petition that Respondent had "substantial" minimum contacts in Vermont.

4. It disagrees with the statement at p. 4 of the Petition that "The [lower] court based its conclusion on the lack of a relationship of the subject matter of the case to Vermont and the Vermont contacts of MetLife and Robertson-Ceco" and instead refers to the opinion below (App. 1a - 35a) which clearly elucidates the basis for the lower court's conclusions.

REASONS FOR DENYING THE PETITION

I. BECAUSE PETITIONER SUSTAINED NO LOSS OF A CONSTITUTIONALLY PROTECTED RIGHT BY THE DECISIONS BELOW, THERE IS NO COMPELLING REASON TO GRANT CERTIORARI

The trial court's dismissal of the Petitioner's complaint pursuant to Federal Rule of Civil Procedure 12(b)(2) for lack of personal jurisdiction over Respondent, affirmed after *de novo* review by the Second Circuit, deprived Petitioner of no constitutional or statutory right to have its Florida based claim adjudicated in Vermont. The discretionary grant of certiorari jurisdiction will be made only for "compelling reasons," Supreme Court Rule

10, in consideration of the fact, among others, that this Court "cannot function as an ordinary appellate court concerned with achieving individual justice in individual cases."[2] 16 Wright, Miller, Cooper & Grossman, Federal Practice and Procedure: Jurisdiction § 4004 at 507. Because Petitioner lost no constitutional or statutory right by reason of the Second Circuit's holding below, this case is an inappropriate candidate for certiorari.

In contrast, the opposite decision by the trial and appeal courts would create a compelling reason for the grant of certiorari on a petition brought by Respondent, since the constitutional right of due process is implicated when a court exercises personal jurisdiction over a foreign defendant. In fact, with the exception of *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984), this Court has never granted certiorari in a case like this one in which none of the lower courts considering the case have held that a foreign defendant was subject to *in personam* jurisdiction. Moreover, the result in *Keeton*, is easily explained with reference to *Calder v. Jones*, 465 U.S. 783 (1984), argued and decided the same day. Both *Keeton* and *Calder* involved libel actions, testing state court jurisdiction over foreign publishers whose allegedly libelous stories had "effects" in state. The California Court of Appeal and the

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[2] Petitioner's claims are likely time barred in all potential fora. The consequence of the operation of statutes of limitations may be of enormous significance to Petitioner, but does not, as explained in the opinion of the Second Circuit below, lend constitutional significance to the Petitioner's claims herein. *See*, App. 26a-27a.

First Circuit applying New Hampshire law, reached contrary results, a situation fitting squarely within the guidelines of Supreme Court Rule 10(b). Therefore, certiorari should not be granted in this matter since there is no compelling reason presented where both the trial court and the appeals court find no jurisdiction.

II. THE DUE PROCESS REASONABLENESS STANDARD APPLIES TO THE ASSERTION OF PERSONAL JURISDICTION IN BOTH SPECIFIC AND GENERAL JURISDICTION CASES[3], AND THERE IS NO DISHARMONY AMONG THIS COURT'S OPINIONS IN *INTERNATIONAL SHOE, PERKINS, WORLD-WIDE VOLKSWAGEN, HELICOPTEROS, BURGER KING* AND *ASAHI* TO THAT EFFECT

Contrary to Petitioners assertion that this Court's opinions in *International Shoe, Perkins, World-Wide Volkswagen, Helicopteros, Burger King* and *Asahi* are disharmonious, those opinions (and others) consistently and uniformly have held that due process requires an independent fairness or reasonableness test, in addition to a threshold minimum contacts test, in all cases where *in personam* jurisdiction is asserted over a non-resident defendant. *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) affirmed this Court's prior holdings that a certain level of contacts between a non-resident defendant and the forum state was essential to an assertion of

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[3] Specific personal jurisdiction is exercised over claims arising out of, or related to, the foreign defendant's forum based contacts, and general personal jurisdiction is exercised as to a controversy not related to the foreign defendant's forum based contacts.

jurisdiction but rejected the concept that jurisdiction could be established by application of a mechanical or quantitative test, such as a minimum contacts test, alone:

> The test is not merely, as has sometimes been suggested, whether the activity [of a non resident defendant] in another state is a little more or a little less. . . . Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure.

Id. at 319 (citation omitted). Thus, *International Shoe* established the ultimate due process test of personal jurisdiction as whether the contacts of the defendant, having satisfied the threshold, quantitative minimal contacts test, are of a qualitative nature sufficient to make an assertion of jurisdiction "reasonable and just according to our traditional conception of fair play and substantial justice." *Id.* at 320.

International Shoe was a "specific" jurisdiction case, that is, the cause of action in that case arose from or was related to the defendant's contacts with the forum. There is no merit, however, to Petitioner's suggestion that this Court's holding in *International Shoe*, establishing the reasonableness test, is limited to specific jurisdiction cases. Nothing in the Court's opinion suggests any such limitation. Moreover, any question to that effect was resolved by the Court's opinion in *Perkins v. Benquet Mining Co.*, 342 U.S. 437, *reh'g denied* (1952).

In *Perkins* this Court held that due process did not prohibit an assertion of jurisdiction over a non-resident

defendant where the cause of action did not arise out of the defendant's activities in the forum state if the defendant had "continuous and systematic" contacts with the forum state. Referencing *International Shoe*, this Court observed that in the "general" jurisdiction[4] setting of *Perkins*, the constitutional issue was, like in *International Shoe*, "one of general fairness" to the defendant. *Id.* at 445. *Perkins* held that the "appropriate tests" for general fairness were as set forth in the *International Shoe* opinion, observing that

> The amount and kind of activities which must be carried on by the foreign corporation in the state of the forum so as to make it reasonable and just to subject the corporation to the jurisdiction of that state are to be determined in each case.

Id. Having found that the defendant in *Perkins* met the minimal contacts test of "continuous and systematic" activities in the forum state, *id.* at 438, this Court proceeded to apply the reasonableness test and determined that the contacts of the defendant were "sufficiently substantial and of such a nature," *id.* at 447, that assertion of jurisdiction would not violate due process. *Id.* at 448.

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[4] The distinction between general and specific jurisdiction cases is irrelevant to whether the reasonableness inquiry enunciated in *International Shoe* must be conducted. A determination whether an assertion of jurisdiction is "specific" or "general" relates only to which minimal contacts test is applicable. Thus *Perkins* is not, as claimed by Petitioner, a separate line of authority, but is part of the progeny of *International Shoe*.

Thus, the Petitioner incorrectly asserts that this Court has previously "used a 'reasonableness' component only in specific jurisdiction cases." Petition, 9. Furthermore, the petition misstates the holding of the court below, and the law, when it states at p. 6 that the "majority below expressly recognized the absence of Supreme Court authority for the employment of a 'reasonableness' test in a *general* jurisdiction case." In fact, the opinion below stated that "the Supreme Court has not had occasion to *conduct* the reasonableness inquiry in a general jurisdiction case, App. 23(a). In *Perkins*, this Court both held that due process required the employment of a "reasonableness" test and proceeded to conduct such a test.

Subsequently, in *Kulko v. California Superior Court*, 436 U.S. 86 (1978), this Court citing both *International Shoe* and *Perkins*, held that "an essential criterion in *all* cases is whether the 'quality and nature' of the defendant's activity is such that it is reasonable and fair to require him to conduct his defense in [the forum] state." *Id.* at 92. (Emphasis supplied), (citations omitted). *Kulko*, like *Perkins*, involved a cause of action unrelated to the defendant's contacts with the forum. *Id.* at 97.[5]

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[5] In addition to the cases cited above, this Court has affirmed the application of the *International Shoe* bifurcated minimum contacts/reasonableness tests in the following cases, all of which involved a cause of action unrelated to the foreign defendant's contacts with the forum state: *Hanson v. Denkler*, 357 U.S. 235 (1958); *Shaffer v. Heitner*, 432 U.S. 186, 212 (1977) ("all assertions of state court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny"); and *Rush v. Savchuk*, 444 U.S. 320, 332 (1980).

The principle that due process demands an independent reasonableness test was confirmed again by the Court in *Burger King v. Rudzewicz*, 471 U.S. 462 (1955). While the Court affirmed the reasonableness of the assertion of jurisdiction on the facts of that specific jurisdiction case, the opinion specifically observes that the "concept of 'fair play and substantial justice' may defeat the reasonableness of jurisdiction even if the defendant has purposefully engaged in forum activities," *id.* at 477, and confirms that an independent fairness test must be conducted after it is determined that minimum contacts have been established. *Id.* at 476.

The opinion of the Court in *Asahi Metal Industry Co. Ltd. v. Superior Court of California*, 480 U.S. 102 (1987), further confirms the due process requirement of an independent reasonableness test. In that case a majority of this Court determined that the reasonableness inquiry defeated the jurisdictional assertion despite the fact that the Court was unable to reach a majority opinion as to whether the minimal contacts test had been met. *Id.* at 114.

There is no merit to the Petitioner's contention that a writ of certiorari should be granted to decide whether due process requires an independent reasonableness inquiry in a general jurisdiction case. If there was ever a question to that effect, the issue was settled in the affirmative by *Perkins*, and has been repeatedly confirmed by this Court since that case.

Nor, as suggested by Petitioner, is there any disharmony among the Court's decisions in *International Shoe, Perkins, World-Wide Volkswagen, Helicopteros, Burger King* and *Asahi* as to the due process analysis to be applied to *in personam* jurisdiction cases. The opinions in each of those cases consistently have held that the two-part jurisdictional test set forth in *International Shoe* applies to all *in personam* cases and that due process requires the application of the reasonableness test. In addition, *World-Wide Volkswagen Corp v. Woodson*, 444 U.S. 286 (1980) and *Helicopteros Nacionales de Columbia v. Hall*, 466 U.S. 408 (1984) serve to establish that the minimum contacts and reasonableness tests are independent of each other. Hence in *World-Wide Volkswagen, supra* at 293-94, the Court affirmed, in a specific jurisdiction case, that the absence of minimal contacts forecloses the jurisdictional inquiry no matter how reasonable the assertion of jurisdiction might otherwise be considered. A similar conclusion was reached by the Court in a general jurisdiction setting in *Helicopteros*. Neither of those opinions suggests that the need for a reasonableness test would be eliminated where minimum contacts were established. *See also, Rush v. Savchuk*, 444 U.S. at 322.

Because this Court has decided and repeatedly affirmed that due process requires application of the reasonableness test in all cases, including general jurisdiction cases, even if the applicable minimum contacts test has been met, there is no reason to grant certiorari to consider the issue again.

III. THE DECISION OF THE COURT BELOW DOES NOT CONFLICT WITH DECISIONS OF OTHER COURTS OF APPEALS OR WITH STATE COURT DECISIONS ON THE PROPER DUE PROCESS STANDARD APPLICABLE IN GENERAL JURISDICTION CASES.

Since *International Shoe* was decided, no Court of Appeals has held that a reasonableness test need not be applied in general jurisdiction cases. Petitioner is incorrect in its conclusion that *Crane v. Carr*, 814 F.2d 758 (D.C.Cir.1987), *Schreiber v. Allis-Chalmers Corp.*, 611 F.2d 790 (10th Cir.1979) and *Behagen v. Amateur Basketball Association of the United States of America*, 744 F.2d 731(10th Cir.1984) evidence conflict among the Circuit Courts on that subject.

The *dicta* in *Crane v. Carr*, upon which Petitioner relies, states only that jurisdiction *may* be found in a general jurisdiction setting if the court determines the non-resident defendant has operated "so continuously and substantially" in the forum state as to render a jurisdictional assertion "fair" without regard to where the claim arose. Far from constituting a rejection of the application of a due process fairness (reasonableness) test, the passage from *Crane* cited by the Petitioner specifically acknowledges, in agreement with the decision below, that the fairness test applies in general jurisdiction cases.

Similarly, the two opinions of the Tenth Circuit Court of Appeals cited by Petitioner do not conflict with this Court's holdings or the decision below that due process requires the application of a separate reasonableness test in general jurisdiction cases. Both Tenth Circuit cases, in fact, recognize that an independent reasonableness test

must be applied, but hold that due process does not require the evaluation of particular "reasonableness" factors. Thus, the *Schrieber* decision correctly holds, consistent with this Court's decision in *Perkins*, that due process does not prohibit assertion of jurisdiction in a general jurisdiction setting and that the reasonableness inquiry is satisfied if the Court concludes that the contacts of the defendant are sufficient to conclude that the defendant is "present" in the forum. Likewise, the *Behagen* opinion of the 10th Circuit holds, in effect, that the reasonableness test is met by a showing that the defendant has maintained "continuous" and *"substantial"* activity in the forum state. 772 F.2d at 734. (Emphasis added). Subsequent decisions in the Tenth Circuit also confirm that a separate reasonableness inquiry is part of the test for all questions of personal jurisdiction. *E.g., Kennedy v. Freeman*, 919 F.2d 126 (10th Cir.1990). In *Kennedy*, the court reported:

> We maintain the following general constitutional test for the exercise of personal jurisdiction: A federal court sitting in diversity may exercise personal jurisdiction over a non-resident defendant only so long as there exists minimum contacts between the defendant and the forum state. The defendant's contacts with the forum state must be such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.

919 F.2d at 128. (Internal quotations omitted), (citations omitted). *See also, Far West Capitol, Inc. v. Towne*, 46 F.3d 1071, 1074 (10th Cir.1995); *Rambo v. American Southern Ins. Co.*, 839 F.2d 1415, 1417 (10th Cir.1988).

Thus, if Petitioner asserts that there is a split among the circuit courts as to whether due process requires the application of an independent reasonableness test in general jurisdiction cases, the assertion is based on a misperception. It is true that the decisions in *Schreiber* and *Behagen* employ a different methodology in applying the reasonableness test than does the decision below. But this Court has observed, at least since its decision in *Perkins*, that both "the amount and kind of activities which must be carried on by the [defendant] in the state of the forum so as to make it reasonable and just to subject the [defendant] to the jurisdiction of that state are to be determined in each case." 342 U.S. at 445. Hence, this Court has never required that any particular factor (with the possible exception of the burden on the defendant, see *International Shoe*, 326 U.S. at 317) be considered in evaluating whether an assertion of jurisdiction in a particular case is reasonable.[6]

Because this Court has consistently recognized that the differing facts of each case will determine the appropriate methodology to be applied in assessing reasonableness, the fact that the decision below adopts a different methodology than that selected by other circuits as appropriate to different cases does not warrant granting certiorari in this case. The concepts of "fairness," "reasonableness" and the "orderly administration of laws" inherent in "traditional concepts of fair play and substantial justice," are not susceptible of reduction to a fixed, mechanical evaluation process. *See International Shoe*, 326

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[6] E.g., *Burger King* states that courts "may" consider certain reasonableness factors in "appropriate" cases. 471 U.S. at 476.

U.S. at 319. A grant of certiorari for the purpose of attempting to formulate a fixed, mechanical reasonableness test would be futile.[7]

Because the factors to be considered in evaluating the reasonableness of an assertion of jurisdiction are dependant upon the facts of a particular case, the weight to be accorded any particular factor is, likewise, a matter of discretion for the lower courts. The Second Circuit in this case determined that it would not consider the implications arising from the fact that Petitioner's claim might be

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[7] See dissent of Justice Marshall in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. at 313:

> For over 30 years the standard by which to measure the constitutionally permissible reach of state-court jurisdiction has been well established:
>
> > "[D]ue process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' " *International Shoe, Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95 (1945), quoting *Miliken v. Meyer*, 311 U.S. 457, 463, 61 S.Ct. 339, 342, 85 L.Ed. 278 (1940).
>
> The corollary, that the Due Process Clause forbids the assertion of jurisdiction over a defendant "with which the state had no contacts, ties, or relations," 326 U.S., at 319, 66 S.Ct., at 160, is equally clear. The concepts of fairness and substantial justice as applied to an evaluation of "the quality and nature of the [defendant's] activity," *ibid.*, are not readily susceptible of further definition, . . .

barred in every state except Vermont by applicable statutes of limitation in its conduct of the reasonableness test. That decision, while consistent with the Court's decision in *Keeton v. Hustler Magazine, Inc.* is, the Petitioner argues, at variance with decisions of the 11th Circuit in *Madara v. Hall,* 916 F.2d 1510 (11th Cir.1990) and the Louisiana Supreme Court in *Reyes v. Marina Management and Consulting, Ltd.* 586 S.2d 103 (La.1991). While it is not clear whether the 11th Circuit and the Louisiana Supreme Court placed any weight on their observations that the "statute of limitations may have run in other potential fora," *Madara,* 916 F.2d at 1519; *Reyes,* 586 S.2d at 114; such discretionary decisions do not call for the grant of a writ of certiorari in this case.

There is, in summary, no reason to grant certiorari because the opinion below does not create or evidence a split of authority between the Second Circuit Court of Appeals and any other circuit court or state court.

IV. CERTIORARI SHOULD NOT BE GRANTED SO AS TO IMPORT VENUE CONSIDERATIONS INTO THE JURISDICTIONAL "REASONABLENESS" ASSESSMENT.

The decision below does not, as petitioner asserts, conflict with this Court's *Burger King* opinion. *Burger King* observed that a transfer of venue might alleviate concerns of inconvenience to a defendant and avoid the need to dismiss a case on constitutional grounds. 471 U.S. at 477. The court below acknowledged the *Burger King* admonition and correctly observed that mere convenience considerations should not be conflated with the due process

concepts of fair play and substantial justice, see *id.* at 477, 78. (Despite the fact that "most" inconvenience concerns "usually" may be accommodated by a change of venue, "minimum requirements inherent in the concept of fair play and substantial justice may defeat the reasonableness of jurisdiction . . . ") (internal quotations omitted). As further pointed out by the lower court, its decision that due process reasonableness constraints demanded the dismissal of this case was based on more than a conclusion that subjecting Respondent to personal jurisdiction would be merely inconvenient. *See* App. 29a.[8] The decision below reflects a careful consideration and application of the *Burger King* opinion, rather than confusion concerning the relationship between due process concern and the lesser principles invoked by transfer of venue and *forum non conveniens* considerations.

Likewise, neither the opinion below, the decision of the First Circuit in *Foster-Miller, Inc. v. Babcock & Wilcox Canada*, 46 F.3d 138 (1st Cir.1995), nor the decision of the Fifth Circuit in *Villar v. Crowley Maritime Corp.* (5th Cir.1993) evidence a split of authority with the Third

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[8] The Second Circuit made this clear:

> The present case is not one in which subjecting Robertson to jurisdiction in Vermont would merely be inconvenient; Met Life's interest in pursuing its action in Vermont and Vermont's interest in adjudicating the case are so attenuated, if not nonexistent, that the exercise of personal jurisdiction would violate our basic sense of "fair play and substantial justice" – and deprive the defendants of the due process guaranteed by the Constitution.

App. 29a

Circuit decision in *Mescalic v. Fiberfloat Corp.*, 897 F.2d 696 (3rd Cir.1990) or the Ninth Circuit decision in *Corporate Inv. Business Brokers v. Melcher*, 824 F.2d 786 (9th Cir.1987). *Foster-Miller* and *Villar* were relied upon by the majority below to point out that the existence of personal jurisdiction is a fundamental issue not to be confused with the common law doctrine of *forum non conveniens* or the federal venue statute, 28 U.S.C. § 1404.[9]

Consistent with *Foster-Miller* and *Villar*, the decisions in *Mescalic* and *Melcher* hold that jurisdiction is an issue preeminent to venue preferences. *Melcher*, 824 F.2d at 791 (commenting that as to the defendant's complaint about litigating in an inconvenient forum, " . . . any inconvenience Melcher might suffer from travel certainly does not rise to the level of a due process violation."); *Mescalic*, 897 F.2d at 701 (" . . . we do not believe that litigation in New Jersey would impose an unfair burden on Fiberfloat. The proper means to resolve the competing forum preferences of the parties may be through a motion for change of venue. *See* 28 U.S.C. § 1404(a) (1982). Jurisdictional issues *are not to be confused with* section 1404(a) motions."). What Petitioner has pointed out as alleged inconsistency in the role given to a party's forum preference as a factor in jurisdictional analysis, is in reality no

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[9] It should also be noted that in 1988 the federal venue statute was amended to the current language: "for the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division **where it might have been brought**." 28 U.S.C. § 1404 (a) (emphasis supplied). Amendment of the venue statute made clear Congress' intent that the venue "cart" not precede the jurisdiction "horse."

more than different courts faced with different facts reaching different conclusions about the implication of the respective facts in each case on the fairness of a personal jurisdiction assertion. *Mescalic, Melcher, Foster-Miller,* and *Villar* all concur that jurisdiction is a preeminent issue to a transfer of venue.

V. THE OPINION BELOW PROPERLY OBSERVED THAT FORUM PREFERENCES OF THE PLAINTIFF PLAY NO ROLE IN THE JURISDICTIONAL ANALYSIS

The Petitioner's assertion that the opinion below "focuses on forum shopping concerns" is patently incorrect. Petition, 19-20. Instead the lower court, citing *Keeton,* specifically refused to incorporate forum shopping concerns into its analysis of the reasonableness of exercising jurisdiction. App. 26a-27a. ("If choice-of-law considerations cannot be invoked by the defendant to demonstrate the unreasonableness of exercising jurisdiction, they likewise should not complicate our analysis of the plaintiff's interest in proceeding in Vermont.")

Thus, the opinion below, having properly applied the dictates of this Court as to the role of forum shopping concerns in the reasonableness analysis of exercising jurisdiction, provides no reason for granting certiorari.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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